

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983

AUG 28 2007

DAVID J. MALAND, CLERK

DeMarcus Bell #1252593

Plaintiff's name and ID Number

Beto Unit / TDCJ

Place of Confinement

BY
DEPUTY _____

CASE NO: 6:07cv415
(Clerk will assign the number)

v.

SW A. BERG

Defendant's name and address

Mahe Mooneyham

Defendant's name and address

Capt. Lemier Herod

Defendant's name and address

(DO NOT USE "ET AL.")

CO Felipe Martinez COSherry Dickens

Beto Unit / TDCJ
P.O. Box 128
TENNESSEE Colony Tx.
75880

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of Texas prison units indicating the appropriate District Court, the Division and an address of the Divisional Clerks.

FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00 paid by the prisoner.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth the information to establish your inability to prepay the fees and costs or give security therefore. You must also include a six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files and appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "NOTICE TO THE COURT OF CHANGE OF ADDRESS" and shall not include any motions(s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedures.

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in the state or federal court relating to imprisonment? YES X NO
- B. If your answer to "A" is yes, describe each lawsuit in the space below. (If there is more than one lawsuit describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: N/A
 2. Parties to previous lawsuit:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
 3. Court (If federal, name the district; if state, name the county) N/A
 4. Docket Number: N/A
 5. Name of judge to whom case was assigned: N/A
 6. Disposition: (Was the case dismissed, appealed, still pending?)
N/A
 7. Approximate date of disposition: N/A

Sun A. Berg - As Director of Classification, she did in her individual capacity purposely and knowingly ignored the P.H.O.P (Physically Handicapped offender program) medical status and label assigned to me as a result of my disablement. In doing so, she contributed to the injury I sustained to my lower back as a result of moving from 1 row to 3 row falling down the staircase an act which any person of normal understanding should have known not to do.

Major Mooneyham - As building Major over seeing all general population activities, he authorized in his individual capacity the change of housing assignment which did result in the lower back injury I sustained on 3-16-06 an act which any person of normal understanding should have known better not to do.

Capt. Norman Herod - As the on shift building Capt. he authorized in his individual capacity the change of housing assignment and did act as Picket officer to open K-134, my cell and require I move to K-333 Capt. Conduct discriminated against my disability which did result in the lower back injury I sustained on 3-16-06 an act which any person of normal understanding should have known better not to do.

CO IV Felipe Martinez - As the on shift escort/offender reassignment officer on 3-15-06 he did in his individual capacity personally ordered me to move from K-134 to a 3 row housing assignment K-333 co officer Conduct discriminated against my disability which did result in the lower back injury I sustained 3-16-06 an act which any person of normal understanding should have known better not to do.

Sherry Dribens - As the on shift escort/offender reassignment officer on 3-15-06, she did in her individual capacity personally ordered me to move from K-134 to a 3 row housing assignment K-333 co officer Conduct discriminated against my disability which did result in the lower back injury I sustained on 3-16-06 an act which any person of normal understanding should have known better not to do.

R.N. Charles Johnson - As the on shift Nurse 3-16-06 he came to assist me after I fell down the staircase while being moved off of 3-row in his individual capacity he did not evaluate me for critical injuries when I was taken to the infirmary by stretcher nor did he put the incident in the Computer the R.N's Conduct discriminated against my disability which did result in the lower back injury I sustained 3-16-06 which any person of normal understanding should have known better not to do.

Charles Johnson R.N I SEEN in the infirmary Beto unit P.O. Box 128 TENN. Colony, TX 75880

II. PLACE OF PRESENT CONFINEMENT: Beto Unit / TDCJ Tenn. Colony, Tx

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? X YES NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THE SUIT:

A. Name of address of plaintiff: DeMarcus Bell # 1252593 Beto Unit P.O.
Box 128 Tennessee Colony, Tx 75880

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Sun A Berg Director of Classification Beto
Unit/TDCJ P.O. Box 128 Tennessee Colony Tx 75880

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

SEE ATTACHED

Defendant #2: Major Moneyham Oversees General population
Beto Unit P.O. Box 128 Tenn. Colony Tx 75880

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

SEE ATTACHED

Defendant #3: Capt. Nemier Herod Building Captain Beto Unit
P.O. Box 128 Tenn. Colony Tx 75880

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

SEE ATTACHED

Defendant #4: Felipe Martinez CO cell move/escort officer
Beto Unit P.O. Box 128 Tenn. Colony Tx 75880

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

SEE ATTACHED

Defendant #5: Sherry Dickens CO cell move/escort officer
Beto Unit P.O. Box 128 Tenn. Colony Tx 75880

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

SEE ATTACHED

ON 3-15-06 and 3-16-06 I, Demarcus Bell the Plaintiff was subjected to "Cruel and unusual punishment" a violation of my 8th Amendment Rights while at the Beto Unit V TDCJ, in Tarrant County Texas. This act did occur as a result of the actions of Sgt A. Berg, Beto Unit Director of Classification Major Mooneyham General population Major, Captain Nemier Herod, the Authorizing Building Captain and Picket operator and Co Felipe Martinez and Co Sherry Dickens the Cell move/escort officer, who did with reckless disregard for my safety and "deliberate indifference" to my health and well being authorize a move in my Housing assignment from a 1 row cell K-1-34 to a 3 row cell K-3-33 even though it was clearly marked on my Classification File that I am physically Handicap offender. On Crutches with my Right leg Amputated below the knee, They did conspire in this act by Authorizing the Move logging the change to my travel card, ordering me to move out of cell K-1-34 climb 2 flights of Stairs on Crutches and one leg, to a 3 row cell K-3-33 assignment. Despite the Very Visible physical Handicap of an amputated lower Right leg just below the knee when a person of normal Understanding should have known better than to do. As A result I fell while coming down 2 flight of Stairs 3-16-06 causing my self Serious injuries to my lower back and amputated leg. I was also not evaluated for Severe injuries By R.N. Charles Johnson when took to the infirmary by stretcher, I was then wheel chaired back to population by Lt. Molina in Severe pain to J-134 Nor did R.N. Charles Johnson put the the incident in the Computer and later another Nurse I seen discovered I had back injuries & that it was never documented.

Plaintiff Requests from defendant Sam A. Bess Compensatory damages in the Amount of \$ 35,000⁰⁰ and punitive damages in the amount of 20,000⁰⁰

Plaintiff Requests from defendant Major Mooneyham Compensatory damages in the amount of \$35,000⁰⁰ and punitive damages in the Amount of \$ 20,000⁰⁰

Plaintiff Requests from defendant Captain Nemier Herod Compensatory damages in the amount of \$ 35,000⁰⁰ and punitive damages \$20,000⁰⁰

Plaintiff Requests from defendant CO Felipe Martinez Compensatory damages in the amount of \$ 35,000⁰⁰ and punitive damages \$ 20,000⁰⁰

Plaintiff Requests from defendant CO Sherry Dickens Compensatory damages in the amount of 35,000⁰⁰ and punitive Damages \$20,000⁰⁰

Plaintiff Requests from defendant R.N. Charles Johnson Compensatory damages in the amount of \$ 35,000⁰⁰ and punitive Damages \$ 20,000⁰⁰

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal argument or cite any cases of statutes. If you intent to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. **IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.**

SEE ATTACHED

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite not cases or statutes.

SEE ATTACHED

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

N/A

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if know to you.

N/A

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ____ YES ☒ NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (If federal, give district and division): N/A

2. Case Number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied? ____ YES N/A NO

C. Has any court ever warned or notified you that sanctions could be imposed? YES ☒ NO

D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed.
(If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): N/A
2. Case number: N/A
3. Approximate date warning were imposed: N/A

Executed on:

8/19/07
(Date)

DEMARCUS BELL #1252593
(Printed Name)

DeMarcus Bell
(Signature of Plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachment thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits are dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger or serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assess by the Court, which shall be deducted in accordance with the law from the inmate account by my custodian until the filing fee is paid.

Signed this 19th day of August, 20 07.
(Day) (Month) (Year)

DEMARCUS BELL #1252593
(Printed Name)
DeMarcus Bell
(Signature of Plaintiff)

WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limbed to monetary sanctions and/or the dismissal of this action with prejudice.



Texas Department of Criminal Justice

STEP 1

OFFENDER
GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2006131593
 Date Received: APR 05 2006
 Date Due: 5-15-06
 Grievance Code: 623
 Investigator ID #: 12144
 Extension Date: APR 20 2006
 Date Retd to Offender:

Offender Name: Demarcus Bell TDCJ # 1252593
 Unit: Beto 1 Housing Assignment: J-134
 Unit where incident occurred: Beto 1

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Nurse Johnson, St. Malina, Warden Heron When? 3-15-06

What was their response? I was chg/threaten me with cases none

What action was taken? none

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

I am filing a complaint against the Beto 1 staff; on my behalf 3/15/06 - 3-16-06 - 3-30-06. I was force to go on 3 row making me leave off row I was assigned by major moonenham capin. I feel count down to the Warden that I move out my cell on row 2-134. I am under the RhoP Program due to I have "one leg" I told Martinez & Mr. Dickerson I can't go up the stairs. Only to be threaten with a major case refusing a direct order housing that lead to me falling down the stairs 3/16/06 where Nurse Johnson & St. Malina took me to the infirmary by stretcher. Only to be made fun of in a unprofessional matter. Stating I'd be alright but a little sore & bruised. But my lower back is in pain & messed up & my right leg is in pain also Nurse Johnson told St. Malina to wheel chair me back to my wing. So I sent 4-60s & sick calls to the infirmary about my situation. They finally sent me a lay-in for medical on 3-30-06 I saw ms. Pat Kayle she searched the computer for my incident and was shock that it had not been in the computer about me falling down the stairs. A unprofessional act Medical neglect took place towards my health by nurse Johnson. Ms. Pat Kayle referred me to Mr. Thompson immediately who examined me for undetected injuries. He stated the recovered up by making go up those stairs with one leg & crutches & not putting the incident on file it shouldnt never took place. Due to me being "Handicap" Mr. Thompson put in for me to have X-rays for the next day 3/31/06 in winter for my X-rays to come back. These unprofessional act has cause me to worry about my health im suffering daily with back pains

Action Requested to resolve your Complaint.

The Down Dry Orthopedics specialist at John Sealy Hospital to place on a proper Unit internal affairs investigate my situation & I have a interview with them & the ~~same~~ ^{health} service patient Liaison Program have a copy my grievance so they can help me get the proper medical care & I be compensated for my pain & suffer & Medical negligence & see the head warden

Offender Signature: Demarcus BellDate: 3/30/06**Grievance Response:**

The documentation was insufficient due to nurse not having name and number for you. He tried to get it but was unsuccessful. He assures this will not happen again. You were seen by a provider on 3-30-06 and meds were ordered. You were instructed on 4-7-06 to pick up your medication that was ordered "keep on person". If a provider feels you need to be referred to orthopedic, they will do so.

Signature Authority: WARDEN R. HERRERADate: APR 20 2006

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days.*
- ☐ 3. Originals not submitted.*
- ☐ 4. Inappropriate/Excessive attachments.*
- ☐ 5. No documented attempt at informal resolution.*
- ☐ 6. No requested relief is stated.*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language.*
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Vacant - discontinued 9-1-00
- ☐ 10. Illegible/Incomprehensible.*
- ☐ 11. Inappropriate.*

UGI Signature: _____

I-127 Back (Revised 9-1-2001)

OFFICE USE ONLYInitial Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

2nd Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

3rd Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____



Texas Department of Criminal Justice

STEP 2

OFFENDER
GRIEVANCE FORM

Offender Name: Damarcus Bell TDCJ # 1252593
 Unit: Beto1 Housing Assignment: J/34
 Unit where incident occurred: Beto1

OFFICE USE ONLY

Grievance #: 2006131593
 UGI Recd Date: 4-26-06
 HQ Recd Date: MAY 02 2006
 Date Due: 5-31-06
 Grievance Code: 623
 Investigator ID #: 10352
 Extension Date: _____

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because...

my initial step 1 complaint grievance # 2006131593 consisted of my health being disregarded and violated by TDCJ - Id George Beto one staff and administration (whomever authorized that I be moved from one row to three rows) in my obvious handicap condition (one leg and on crutches) and obvious act of medical indifference. My step one complaint was received April 05, 2006 in appealing my step one Based on the fact that warden Hennessey response was insufficient and disregarded the issue of my complaint in addition to making invalid excuses for medical staff such as them not having my name and number was unsuccessful in a very available offender how could the nurse not have gotten my name and number.

Offender Signature: Damarcus BellDate: 4/23/06

Grievance Response:

2006131593

Bell

1252593

Documentation was reviewed concerning complaints of being dissatisfied with the treatment you received on 3/16/2006. This issue was appropriately reviewed at Step 1. The Health Summary for Classification (HSM-18) cannot be revised retroactively. A review of the HSM-18 from 9/7/2004 through 3/16/2006 does not reflect you had a "ground floor only" restriction until a revision was made on 3/16/2006. We apologize for any inconvenience you may have received however the problem you describe appears to have been resolved or corrected at the facility level. You may wish to submit a Sick Call Request to the facility medical department staff if you feel current medical conditions warrants a re-evaluation. Review of the Step 1 grievance reflects you did not attempt informal resolution of medical concerns with facility medical supervisory staff. Refer to HS-34 "Getting Medical Treatment" for further information. No action through the grievance mechanism is warranted.

Signature Authority: Guy SmithDate: 5-5-06

Guy Smith
Program Admin. III-079

Returned because: **Resubmit this form when corrections are made.*

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 6. Inappropriate. *

CGO Staff Signature: _____

I-128 Back (Revised 9-1-2001)

OFFICE USE ONLY

Initial Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

2nd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

3rd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

to Marcus Bell
P.O. Box 128 Tyler, TX
New Colony
27 AUG 2007 PM 7:58

TEXAS POST
TYLER, TX
27 AUG 2007 PM



FILED
U.S. DISTRICT COURT
TYLER, TEXAS
AUG 28 2007
DAVID J. MALAND, CLERK

David J. Maland Clerk of Court
106 Federal Bldg & U.S. Court House
211 Ferguson St.
Tyler TX 75701